APPEAL NO. 041359
FILED JULY 30, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 11, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____.

The claimant appealed, contending that two doctors had diagnosed her as having a new injury on _____. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant had sustained a prior compensable low back injury on (prior date of injury). Although the claimant had been certified as having reached maximum medical improvement in 2000 with an impairment rating for that injury, the testimony and documentary evidence indicates that the claimant was still seeing Dr. R for that injury two months prior to _____.

The claimant, a driver who took disabled patients from place to place, testified that on _____, she injured the left side of her low back preventing a patient in a wheelchair from tipping over. The claimant's regular time off was the next two days and on December 17, 2002, the claimant had another incident where her left side or left leg collapsed and she fell to the ground. The claimant returned to Dr. R on December 19, 2002. What Dr. R allegedly told the claimant is in dispute but a Work Status Report (TWCC-73) from Dr. R dated December 19, 2002, lists the 1999 injury as the date of injury and releases the claimant to light duty. The claimant subsequently changed treating doctors to Dr. M whose reports indicate that the claimant sustained a new injury on _____. The claimant's position is the 1999 injury was to the right side of her low back while the _____, injury was to the left side of her low back with different diagnoses. A Texas Workers' Compensation Commission-required medical examination doctor was of the opinion that the claimant's current symptoms are a continuation of her 1999 injury. The hearing officer commented that the claimant "was neither credible or persuasive."

At issue is whether the claimant's current symptoms are a continuation of her 1999 injury or whether the claimant sustained a new injury on _____. That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance

Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FIDELITY AND GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge